IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

FAO(MVA)No.320 of 2003.

Date of decision:26.09.2006

Smt.Sat Kali & Others. **….Appellants**

Versus

Mrs.Jasbir Kaur & Others. **….Respondents.**

Coram

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting ?[1]

For the Appellants: **Mr.Anil Tomar, Advocate.**

For Respondent No.1: **Mr.B.B. Vaid, Advocate.**

For Respondent No.2: **Ms.Devyani Sharma, Advocate.**

Deepak Gupta,J.(Oral)

This appeal has been filed by the claimants against the award of the Motor Accident Claims Tribunal (II), Shimla.

The appellants have raised three grounds in the appeal i.e. (i) firstly, that the compensation awarded is on the lower side, (ii) that the interest should have been awarded at the rate of 12% p.a. and not 9% p.a. (iii) and lastly, that the Insurance Company should have been made liable to pay the amount.

As far as the assessment of compensation is concerned, I find that the Tribunal, on the basis of evidence led before it in the present case, has

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

correctly assessed the income and has applied the correct multiplier. In the present case the deceased was 22 years old and the Tribunal has assessed the loss of dependency at Rs.1200/- per month i.e. Rs.14,400/- per annum and multiplier of 17 has been applied. The claimants are wife, son and mother of the deceased. In my opinion, the award is just and reasonable and cannot be said to be on the lower side by any stretch of imagination.

With regard to the interest, the same is awarded at the rate of 9% per annum, which is absolutely correct keeping in view the falling rate of interest and same calls for no interference.

The victim has been held to be unauthorized passenger in this case. This finding of the Tribunal also appears to be correct and based on evidence led before it. However, Mr.Anil Tomar, learned counsel appearing for the appellants, contended that following the principles laid down by the Apex Court in cases ***National Insurance Company Ltd.***vs. ***Baljit Kaur and others (2004) 2 SCC 1, National Insurance Company Ltd.*** vs. ***Ajit Kumar and others, (2003) 9 SCC 668 and New India Assurance Co.Ltd.*** vs. ***Asha Rani and others, (2003) 1 SCC 223***, even if the Insurance Company is not liable this Court may direct that it should satisfy the award and may be given the right to recover the same from the insured.

Ms.Devyani Sharma, learned counsel appearing for the Insurance Company, submits that in view of the judgment of the Apex Court in ***National Insurance Company*** vs. ***Bommithi Subbhayamma and others, 2005 ACJ 721,*** the Insurance Company cannot be held liable to satisfy the award. She also urges that the appellants cannot be said to be "aggrieved parties" and have no right to file the appeal since the award is in their favour and they cannot insist that the amount be paid by the Insurance Company. The second contention cannot be accepted in view of the view already taken by this Court in case ***titled: Surjit Singh and others FAO(MVA) NO.485 of 2003 and connected matters decided on 3.4.2006.***

In Baljit Kaur's case (supra) the Apex Court clearly laid down that in view of the conflicting judgments from time to time the law was not settled and the law as laid down in Baljit Kaur's case would only have prospective application. In cases up to the date of the said judgment in Baljit Kaur's case the Insurance Company could be asked to deposit the amount with liberty reserved to it to recover the same from the insured. In the present case, the accident occurred before the judgment in Baljit Kaur's case was delivered. In fact the award was also announced before the judgment in Baljit Kaur's case was delivered. In two other cases arising out of this accident being FAO(MVA) Nos.291 and 292 of 1998 this Court following the judgment in Baljit Kaur's case this Court held that the Insurance Company

would be liable to pay the awarded amount to the claimants and it may take steps in the light of the law laid down in the Baljit Kaur's case to recover the same from the owner of the vehicle in question. Therefore, the present appeal is also allowed to the limited extent and it is directed that the Insurance Company though not liable, shall satisfy the award and shall have the right to recover the amount deposited by it along with interest from the insured. The Insurance Company shall not be liable to file any separate proceedings to recover the amount and can approach the Motor Accident Claims Tribunal by way of execution petition for recovery of the amount. The judgment in this case shall be deemed to be the decision on the dispute inter se the insurer and the insured.

The appeal is disposed of in the aforesaid terms.

September 26, 2006. **(Deepak Gupta)**
(aks) **Judge.**